federal register

Monday
September 28, 1981

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Prime Farmland: Interim Regulatory Program

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 716

Prime Farmland: Interim Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Confirmation of effective date and amendments to final rule.

SUMMARY: The Department is making effective and amending certain rules implementing the initial program of the Surface Mining Control and Reclamation Act, the effective dates of which were postponed in **Federal Register** notices of February 4, 1981 (46 FR 10707), March 23, 1981 (46 FR 18023), April 3, 1981 (46 FR 20211), April 29, 1981 (46 FR 23924), June 15, 1981 (46 FR 31258), and August 14, 1981 (46 FR 41046). These rules relate to the definition and identification of prime farmland.

Two of these changes to the interim program regulations resulted from U.S. District Court decisions while four other changes were made so that the interim and permanent program regulations would coincide to provide for a smooth transition upon adoption of State programs.

EFFECTIVE DATE: September 28, 1981.

FOR FURTHER INFORMATION CONTACT: Donald F. Smith, Agricultural Engineer, Office of Surface Mining, Department of the Interior, 1951 Constitution Avenue, NW, Washington, D.C. 20240. Telephone (202) 343-5954.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 1977 (42 FR 62639–62716), the Office promulgated final initial regulations (30 CFR Chapter VII) as required by section 501(a) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Section 1251(a), (SMCRA or the Act). Section 716.7 of the initial regulations pertains to surface coal mining operations conducted on prime farmland, (42 FR 62693–95 (1977)).

Six changes to § 716.7 were proposed at 44 FR 33628 (July 11, 1979) and published in final form at 46 FR 7208 (January 22, 1981). Two of these changes to the interim program regulations resulted from U.S. District Court decisions while four other changes were made so that the interim and permanent program regulations would coincide to provide for a smooth transition upon adoption of State programs. These six changes are discussed in detail at 44 FR 33628 (July 11, 1979) and 46 FR 7208 (January 22, 1981). In brief, these changes include: (1) defining "historically used for cropland" as 5 out of 10 years; (2) measuring the historical use period from the date of acquisition of the land for mining purposes; (3) providing for the regulatory authority to have flexibility to classify as prime farmlands those lands important to the State or local economy; (4) providing for the regulatory authority to have flexibility to classify as prime farmland those lands taken out of cropland use for more than 5 years in 10 due to ownership circumstances which do not relate to the capability of the land to produce crops; (5) substitution of the term "cropland" for "cultivated crops"; and (6) implementing the grandfather clause of the Act (Section 510(d)(2)). This notice discusses the first five rule changes described above. The sixth rule change (the grandfather clause) has been combined with other grandfather issues discussed in **Federal Register** being published Sept. 29, 1981.

The statutory basis, legislative history and rulemaking history of the first five regulation changes described above appeared in the Notice of Proposed Rules (44 FR 33626–29, July 11, 1979) and Notice of Final Rule (46 FR 7208–12, January 22, 1981). That material will not be repeated here but is incorporated and made a part hereof unless otherwise stated in the notice.

Analysis of Comments

Numerous comments were received on the issues of whether to modify, issue or suspend indefinitely the regulations published in January, 1981. Most of these comments related to implementation of the grandfather clause in the Surface Mining Act and are discussed in a separate **Federal Register** notice. OSM received only one comment on the prime farmland definitions. This commenter referenced comments and testimony presented to OSM during earlier rulemakings on 30 CFR 716.7 in which the commenter objected to the definition of prime farmland as not consistent with the definition set forth in the legislative history at 123 Cong. Rec. S8109 (daily ed. May 20, 1977). OSM has reviewed its previous response to this comment (see 42 FR 62661, December 13, 1977, second and third columns) and finds that no changes in the definition are necessary.

Accordingly, the prime farmland identification and definition regulations published on January 22, 1981, will be made effective without further change except for § 716.7(a)(2) which will be addressed in a separate document published on September 29, 1981. For the convenience of the public, the following table shows the current status of all subsections of 30 CFR 716.7:

Subsection of § 716.7	Where to find the final regulation
(a)(1)	The "historical use" rulemaking published today.
(a)(2)	The "grandfather clause" rulemaking published Sept. 29, 1981.
(b)(1), (2) and (3)	The "historical use" rulemaking published today.
(c)	42 FR 62694, December 13, 1977, codified at 30 CFR 716.7(c).
(d)(1)	The "historical use" rulemaking published today.
remainder of (d), (e), (f), and (g).	42 FR 62694, December 13, 1977, codified at 30 CFR 716.7 (d), (e), (f), and (g).

Statements Under E.O. 12291 and NEPA

This final rule is exempt from section 102(2)(c) of the National Environmental Policy Act under section 501(a) of the Surface Mining Act.

OSM has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis will not be prepared.

Regulatory Flexibility Act

Pub. L. 96–354 requires that the head of an agency must make a certification of effect on small entities and publish the certification and reasons therefore in the appropriate **Federal Register** document. Following is the required certification.

I certify that making this rule effective will not have a significant economic impact on a substantial number of small entities. Based on OSM's experience with the Small Operator's Assistance Program (SOAP), OSM estimates that there are 2,000 to 3,000 small operators in the coal mining industry of the United States.

Precise data on the number of small operators that disturb prime farmland are not available. However, OSM estimates that less than 100 small operators disturb prime farmland in those States having the highest percentage of such land (Illinois, Indiana, Iowa, Missouri and Ohio). Because the number of small operators is low and the number of strippable prime farmland acres is low, OSM has determined that these regulations will have a limited impact on small entities.

Dated: September 22, 1981.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

Drafting Information

The principal author of these rules and the accompanying preamble is Donald F. Smith, Office of Surface

Mining, Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240, phone (202) 343-5954.

Final Regulations

PART 716—SPECIAL PERFORMANCE STANDARDS

The following regulations in Chapter VII of Title 30 of the Code of Federal Regulations are amended as follows:

§ 716.7 [Amended]

1. 30 CFR 716.7(a)(1) as published on January 22, 1981, is confirmed and (a)(2) is removed and reserved.

2. 30 CFR 716.7 (b)(1) through (b)(3) as published on January 22, 1981, is confirmed.

3. 30 CFR 716.7(d)(1) is removed in its entirety and new § 716.7(d)(1) is added as follows:

(d) * * *.

(1) lands within the proposed permit boundaries have not been historically used for cropland.

(Secs. 201, 501, 527 and 529, P.L. 95-87 Stat. 445 (30 U.S.C. 1201))

[FR Doc. 81-28045 Filed 9-25-81; 8:45 am]

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

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DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSIS**		DOT/FAA	USDA/FSIS**
DOT/FHWA	USDA/FSQS**		DOT/FHWA	USDA/FSQS**
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/MA*	MSPB/OPM		DOT/MA*	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

*Note: The Maritime Administration will begin Mon./Thurs. publication as of Oct. 1, 1981.

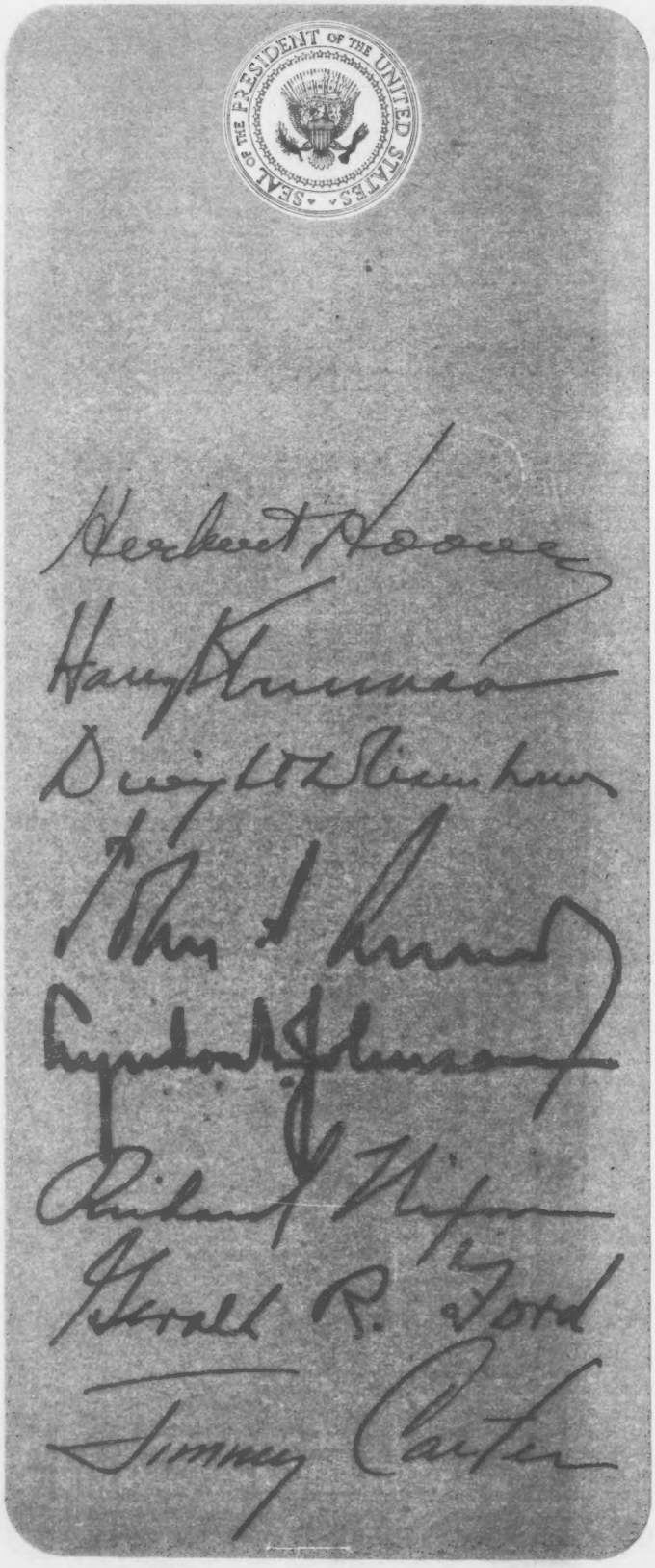
**Note: As of September 14, 1981, documents received from Food Safety and Inspection Service (formerly Food Safety and Quality Service) will no longer be assigned to the Tues./Fri. publication schedule.

REMINDERS

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing September 22, 1981



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